

South Dakota Department of Human Services

Policy Title:	General Privacy		
Policy Number:	DHS-100-01	Version:	1.1
Approved By:			
Effective Date:	April 14, 2003		
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Purpose:

The intent of this policy is to outline DHS general guidelines and expectations for the necessary collection, use, and disclosure of confidential information about individuals in order to provide services and benefits to individuals, while maintaining reasonable safeguards to protect the privacy of their protected health information or PHI.

Policy:

1. General – DHS will safeguard PHI about Individuals

- a. DHS may collect, maintain, use, transmit, share and/or disclose PHI about individuals to the extent needed to administer DHS programs, services and activities.
- b. DHS will safeguard all confidential information about individuals, inform individuals about DHS' privacy practices and respect individual privacy rights, to the full extent required under this policy.
- c. This policy identifies three types of individuals on whom DHS is most likely to obtain, collect or maintain individual PHI:
 - i. DHS Clients/Patients;
 - ii. Participants; and
 - iii. Licensees or Providers.
- d. DHS shall provide training to all its work force on DHS' privacy policies and procedures, and shall require every participant of this training to sign a **DHS 2091**, "Privacy Program Statement of Understanding" outlining their role and responsibilities relating to protecting the privacy of DHS clients/patients and participants.
 - i. *Workforce is defined as: employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the*

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Department of Human Services, is under the direct control of the department, whether or not they are paid by the department.

2. Safeguarding PHI about Clients/Patients

A “Client” or “Patient” is an individual who requests or receives services from DHS.

- a. DHS, its employees, and business associates will respect and protect the privacy of records and PHI about clients/patients who request or receive services from DHS. This includes, but is not limited to:
 - i. Applicants or recipients of DHS services such as persons who apply for or admitted to an Intermediate Care Facility for the Mentally Retarded (ICFMR), a state hospital, or who are committed to the custody of DHS;
 - ii. Children under guardianship through court ordered commitment; and
 - iii. Persons who are provided outpatient Electroconvulsive Therapy or Forensic Evaluation.
- b. All PHI on DHS clients/patients is confidential and must be safeguarded in accordance with DHS privacy policies and procedures.
- c. DHS shall not use or disclose PHI unless either:
 - i. The client/patient has authorized the use or disclosure in accordance with **DHS Policy DHS-100-03**, “Use and Disclosures of Client/Patient or Participant PHI”; or
 - ii. The use or disclosure is specifically permitted under **DHS Policy DHS-100-03**, “Use and Disclosures of Client/Patient or Participant PHI”, or as otherwise allowed or required by Federal or State law.
- d. DHS program offices shall adopt procedures to reasonably safeguard individual client/patient PHI.

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3. **Safeguarding information about Participants**

“Participants” are individuals participating in DHS programs, and activities that serve the general population, but who do not receive program benefits or direct services that are received by a “client/patient”.

- a. When DHS or its business associates obtain individually identifiable information about Participants, DHS may use and disclose such information consistent with Federal or State laws and regulations or DHS policies and procedures.
- b. DHS will safeguard all confidential information about Participants consistent with Federal or State laws and regulations or DHS policies and procedures.

4. **Safeguarding information about Licensees and Providers**

A “Licensee” is a person or entity that applies for or receives a license, certificate, endorsement, registration or similar authority from DHS to perform or conduct a service, activity or function.

A “Provider” is a person or entity who may seek reimbursement from DHS as a provider of services to DHS clients/patients.

- a. When DHS obtains information about Licensees or Providers, DHS may use and disclose such information consistent with Federal or State law and regulation. Information regarding the qualifications of Licensees and Providers are public records.
 - i. DHS will safeguard confidential information about Licensees and Providers consistent with Federal or State law and regulations and DHS policies and procedures.
 - ii. When DHS obtains PHI about individuals that relates to determining payment responsibility when a provider submits a claim or other request for payment to DHS, DHS will safeguard such PHI consistent with Federal or State law and regulations and DHS policies and procedures.
 - iii. When DHS is authorized by Federal or State law and regulation, DHS may review the performance of Licensees and Providers in the scope of their accreditation or licensing activities.

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- iv. DHS will safeguard PHI about individuals obtained during accreditation or licensing activities consistent with Federal or State law and regulations and DHS policies and procedures.

5. Conflict with other requirements regarding privacy and safeguarding

- a. DHS has adopted reasonable policies and procedures for administration of its programs, services and activities. If any Federal or State law and regulation, or order of a court having appropriate jurisdiction, imposes a stricter requirement upon any DHS policy regarding the privacy or safeguarding of PHI, DHS shall act in accordance with that stricter standard.
- b. DHS staff shall act in accordance with established DHS policy and procedures regarding the safeguarding and confidentiality of individual information, whether health-related or not, in all DHS programs, services and activities.
- c. In the event that more than one policy applies but compliance with all such policies cannot reasonably be achieved, the DHS employee will seek guidance from supervisors according to established DHS policy and procedures. DHS staff should consult with their HIPAA Privacy Contact for their division or facility or the DHS HIPAA Privacy Office in appropriate circumstances.

6. DHS Notice of Privacy Practices

- a. DHS will make available a copy of the “DHS Notice of Privacy Practices,” to any client/patient applying for or receiving services from DHS.
- b. The DHS Notice of Privacy Practices shall contain all information required under Federal HIPAA regulations regarding the notice of privacy practices for protected health information.
- c. Where DHS is a provider, DHS will seek to acquire a signed acknowledgement, **DHS 2092**, “Notice of Privacy Practices, Acknowledgement of Receipt,” from each client/patient.

7. Client Privacy Rights

DHS policies and procedures, as well as other Federal or State laws and regulations, outline the client/patient’s right to access their own PHI, with some exception. The **DHS Policy DHS-100-02**, “Client/Patient Privacy Rights” outlines specific actions that a client/patient can take to request

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restrictions or amendments to their PHI, and the method for filing complaints.

8. Use and Disclosures of Client/Patient or Participant PHI

DHS shall not use or disclose any PHI about a client/patient or participant of DHS programs or services without a signed authorization for release of that PHI from the individual, or the individual's personal/legal representative, **unless** authorized by **DHS Policy DHS-100-03**, "Uses and Disclosures of Client/Patient or Participant PHI" or as otherwise allowed or required by Federal or State law and regulation.

9. Minimum Necessary Information

- a. DHS will use or disclose only the minimum amount of information necessary to provide services and benefits to clients/patients, and only to the extent provided in DHS policies and procedures.
- b. **DHS Policy DHS-100-04**, "Minimum Necessary Information" does not apply to:
 - i. Disclosures to or requests by a health care provider for treatment;
 - ii. Uses or disclosures made to the individual;
 - iii. Uses or disclosures authorized by the individual;
 - iv. Disclosures made to the Secretary of the United States Department of Health and Human Services in accordance with Federal HIPAA regulations at 45 CFR 160, Subpart C.
 - v. Uses or disclosures that are required by law; and
 - vi. Uses or disclosures that are required for compliance with Federal HIPAA regulations at 45 CFR, Parts 160 and 164.
- c. When using or disclosing an individual's PHI, or when requesting an individual's PHI from a provider or health plan, DHS employees must make reasonable efforts to limit the amount of PHI to the minimum necessary needed to accomplish the intended purpose of the use, disclosure, or request, as outlined in **DHS Policy DHS-100-04**, "Minimum Necessary Information".

10. Administrative, Technical and Physical Safeguards

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DHS staff must take reasonable steps to safeguard confidential information from any intentional or unintentional use or disclosure, as outlined in **DHS Policy DHS-100-05**, “Administrative, Technical, and Physical Safeguards”.

11. Use and Disclosures for Research Purposes and Waivers

DHS may use or disclose an individual’s PHI for research purposes as outlined in **DHS Policy DHS-100-06**, “Uses and Disclosures for Research Purposes and Waivers”. This policy specifies requirements for using or disclosing PHI with and without an individual’s authorization, and identifies some allowable uses and disclosure of information.

12. De-Identification of Client/Patient Information and Use of Limited Data Sets

DHS staff will follow standards under which client/patient information can be used and disclosed if information that can identify a person has been removed or restricted to a limited data set. Unless otherwise restricted or prohibited by other Federal or State law and regulation, DHS can use and share information as appropriate for the work of DHS, without further restriction, if DHS or another entity has taken steps to de-identify the information as outlined in **DHS Policy DHS-100-07**, “De-identification of client information and Use of Limited Data Sets.”

13. Business Associate Relationships

DHS may disclose PHI to business associates with whom there is a written contract or memorandum of understanding as outlined in **DHS Policy DHS-100-08**, “DHS Business Associate Relationships”.

14. Enforcement, Sanctions and Penalties for Violations of Individual Privacy

All employees, volunteers, interns, independent contractors and members of the DHS workforce must guard against improper uses or disclosures of DHS client/patient or participant’s information as outlined in **DHS Policy DHS-100-09**, “Enforcement, Sanctions, and Penalties for Violations of Individual Privacy”.

Form(s):

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- “DHS Notice of Privacy Practices”
- **DHS 2091**, “Privacy Program, Statement of Understanding”
- **DHS 2092**, “DHS Notice of Privacy Practices, Acknowledgement of Receipt”

Reference(s):

- 45 CFR Parts 160 and 164

Contact(s):

- For Central Office Staff and Field Office Staff - DHS HIPAA Privacy Office, (605) 773-5990
- For Human Services Center Staff – DHS HIPAA Privacy Contact, (605) 668-3100
- For South Dakota Developmental Center Staff – DHS HIPAA Privacy Contact, (605) 472-2400